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EXAMINER

REID, CHERYL M

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/848,713

Applicant(s)

GRUMANN ET AL.

Examiner

Cheryl M. Reid

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 <sup>23 (BP)</sup> is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 <sup>(BP)</sup> is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/01
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-23 have been examined.
2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Because new grounds of rejection are being applied against substantively unamended claims, this action is **NON-FINAL**.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-6, 8-11, 12-15, 17-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Helsper et al (6876988) hereafter Helsper.
4. In regards to claim 1, Helsper teaches of collecting service performance information from the service (Col 10, lines 39-43); and translating the collected service performance information into a generic output (Col 2, lines 56-60) wherein the generic output is the near-term predictions and/or component performance.
5. In regards to claim 2, Helsper teaches of collecting external performance information from one or more of the one or more components (Col 3, lines 8-10); translating the collected external performance information; and combining the translated

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external performance information and the translated service performance information to provide the generic output (Col 2, lines 55-60).

6. In regards to claims 3 and 13, Helsper teaches of wherein the generic output comprises one of a scriptable interface and an application programming interface (Fig 3b, 4a).

7. In regards to claim 4 and 5, Helsper teaches of accessing the generic output to read the health of the service and reading performance information provided by the service (Col 3, lines 53-58).

8. In regards to claim 6, Helpser teaches of deriving performance information provided from the service (Col 6, lines 40-46).

9. In regards to claims 8 and 15, Helpser implicitly teaches of using a probe program to read the performance information. Helpser teaches (Col 10, lines 40-45) that "...system communicates with one or more of the monitoring system to....". Since Helsper's system is a computer system, then it is inherent that a program is used. Probe is defined as any device design to investigate and obtain information. Examiner is using this definition because it offers the broadest reason of interpretation.

10. In regards to claim 9, Helsper teaches of the collected service information relates to a plurality of performance metrics (Col 10, lines 40-44); wherein the generic output comprises a plurality of service health metrics (Col 12, lines 2-8) and wherein the translating step comprises combining one or more of the plurality of service health metrics (Col 2, lines 55-60, Col 3, lines 7-10).

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11. In regards to claim 10, Helpser teaches of the plurality of service health metrics comprise availability, capacity, throughput, service time....and user satisfaction (Col 10, lines 49-51, 20-30, Fig 3b-Fig 9a).

12. In regards to claim 11, Helsper teaches of a data collection engine that collects service health information (Col 10, lines 39-43) ; and a data analysis engine that translates the collected service health information using a health generation algorithm and provides one or more generic health metrics(Col 2, lines 55-60, Col 6, lines 43-45). Helpser teaches that “ ..in response to an evaluation of received input values”, evaluation is a synonym for analysis and wherein the data analysis engine is incorporated in the performance forecasting system. Helpser does not explicitly teach of “using a health generation algorithm” however this is inherent. Helpser system is a computer system that forecast system performance (i.e. health of a system) , therefore it is inherent that algorithms are used to forecast performance.

13. In regards to claim 12, Helsper teaches of one or more external components, wherein the data collection engine collects external performance information from one or more of the one or more external components (Col 3, lines 9-10) and wherein the data analysis engine translates the collected external information using the health generation algorithm to provide the one or more generic health metrics (Col 2, lines 55-60, Col 6, lines 45-47).

14. In regards to claim 14, Helsper teaches of a data query module that reads performance information from the service (Col 10, lines 40-45) and a data derivation module that derives performance information from the service (Col 6, lines 40-46).

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15. In regards to claim 17, Helsper teaches of an interval control engine that receives the service health information at a first time interval and provides an output having a second time interval different from the first time interval (Col 6, lines 30-32).

16. In regards to claim 18, Helpser teaches of collecting service performance information from the service (Col 10, lines 39-43); collecting external performance information from components of the host machine (Col 10, lines 55-61, Col 16, lines 56-65); On page 8 of applicants response dated January 21, 2005, applicant asserts that Helpser does not disclose or suggest "translating the collected service and external performance information according to a health generation algorithm to generate a generic service health output", this assertion is respectively traversed. Helpser teaches of translating the collected service and external performance information according to a health generation algorithm to generate a generic service health output (Col 16, lines 55-58, Col 2, lines 55-60). In Col 2, lines 55-60, Helpser explicitly teaches " the performance forecasting system automatically translates the measured input data into useful near-term predictions of system and component performance, in Col 16, lines 55-58, Helpser explicitly teaches that " these input values may include intrinsic measured values as well as extrinsic values"; and providing the generic service health output as an output file accessible by (Fig 4a, Col 12, lines 63-67, Col 13, lines 1-50) performance monitoring tools wherein the performance monitoring tools are the users(i.e. system managers/operators).

17. In regards to claim 19, Helsper teaches of performance information comprises reading first service performance parameters and deriving second service performance

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parameters, and wherein the step of collecting the external performance information comprises reading first external performance parameters and deriving second external performance parameters (Col 10, lines 40-45, Col 3, lines 8-15, Col 6, lines 40-45) wherein the imputed values are the second service performance and second external performance parameters.

18. In regards to claim 20, Helsper teaches of collecting the service performance information on a first time interval and adjusting the first time interval to provide the generic service health output at a second time interval (Col 6, lines 30-35). Examiner is interpreting "adjusting the first time interval" to mean changing the "first time interval" which can be accomplished by adding more time to the "first time interval" to obtain the "second time interval" which Helsper does by using measured input data (data that relates to first time interval) to predict near-term performance (second time interval) (Col 2, lines 55-60, Col 12, lines 10-15, lines 64-65).

19. In regards to claim 21, Helpser teaches of a collection module that receives performance information related to the service (Col 10, lines 39-43): On page 8 of applicants response dated January 21, 2005, applicant asserts that Helpser does not disclose or suggest "a health generator module that applies a rule set to the received performance information and derives generic health metrics therefrom", this assertion is respectively traversed. Helpser teaches of computing estimates of the computer system's performance (i.e. health of a system) for a current time interval as well as for future time periods (Col 6, lines 30-40). In Col 2, lines 49-55, Helpser teaches of " the forecasting system automatically implements a regression analysis to compute a

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forecast for each output variable as a function of each input variable", wherein the forecasting system is the health generator module because it allows users (system managers/operators) to know the status of the system (i.e. health of system) (Col 12, lines 1-15); wherein the rule set is the rules that are used in the regression analysis.

The American Heritage College Dictionary defines rules as a standard method or procedure for solving a class of problems. It is well-known in the technical art that rules (ie. Standard method for solving problems) are used in the mathematical process of regression analysis; Examiner also notes that rules and formula are synonyms. The formula for regression analysis is also well-known in the art; an output module that outputs the generic health metrics (Col 3, lines 50-60, Col 13, lines 1-40).

20. In regards to claim 22 Helsper teaches that the collection module receives external performance information from one or more external services coupled to the host computer and receives internal performance information related to operation of the service on the host computer (Col 3, lines 9-15).

21. In regards to claim 23, Helsper teaches of wherein the generic output is a consistent set of health metrics that can be accessed by an end consumer (Col 3, lines 45-60).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



22. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helsper (US 6786988) as applied to claim 1 above, and further in view of Chappelle (US 5949976).

23. In regards to claim 7, Helsper does not explicitly teach of using a wrapper program. Chappelle teaches about using a wrapper program (performance monitoring and graphing tool) to read the performance information (Col 3, lines 29-32). The examiner is interpreting wrapper program as any program that is used as an interface program because this gives the broadest reason of interpretation. In Helsper's invention the performance forecasting system communicates with one or more monitoring system (Col 10, lines 40-41). It would have been obvious to one of ordinary skill in the art at the time of invention to utilize the teaching of Chappelle in regards to using a wrapper program because it would allow the performance forecasting system to read the information supplied by various monitoring systems regardless of the components particular infrastructure. One of ordinary skill in the art would have been motivated because this modification would result in a more versatile system.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helsper as applied to claim 1 above, and further in view of Warland et al. (US 6647413).

24. In regards to claim 16, Helsper does not explicitly teach of a weighting scheme that .....and averages collected service health information for a service health metric. Warland teaches about a summation scheme that combines one or more performance

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information parameters (Col 7, lines 32-33) and an averaging scheme that averages collected service health information for a service health metric (Col 7, lines 55-57). In HPCN Walrand teaches of a weighting scheme that allocates different level of importance to different parameters (P. 2). One objective of Walrand invention is to optimize the network performance (Col 2, lines 53-54). It is an objective of Helsper invention to allow e-business to optimize the performance of their systems (Col 1, lines 25-60). It would have been obvious to one of ordinary skill in the art at the time of invention to utilize the above-mentioned features of Warland's into Helsper's invention because adding these features to Helsper's system would allow him to focus on specific parameters (using the weighting scheme) and give him information regarding the overall performance of the network system( using the summation and averaging schemes). These added features would allow Helsper to provide a healthy network and more effectively predict failure of registered computing devices (Col 2, lines 25-34) resulting in a more efficient performance forecasting system. It is for this reason that one of ordinary skill in the art at the time of invention would have been motivated to make the above-mentioned modifications.

### ***Conclusion***

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl M. Reid whose telephone number is 571 272 3903. The examiner can normally be reached on Mon- Fri (7-3:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dharia Rupal can be reached on (571)272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cmr

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